

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

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|---|---|------------------------------------|
| In the Matter of the Petition of |) | DOCKET NO. A81-525 |
| |) | |
| Y-O LIMITED PARTNERSHIP, |) | |
| |) | |
| To Amend the Agricultural Land Use District |) | FINDINGS OF FACT, CONCLUSIONS OF |
| Boundary to the Urban Land Use District for |) | LAW, DECISION AND ORDER, AND |
| Approximately 408.719 Acres of Land at |) | CERTIFICATE OF SERVICE DENYING THE |
| Kaloko and Kohanaiki, North Kona, Hawai'i, |) | 2022 MOTION FOR EXTENSION OF TIME |
| State of Hawai'i. TMK Nos.: (3) 7-3-09:19, |) | TO APPLY FOR REDISTRICTING OF |
| 20 and 57 to 62. |) | PHASE II |
| _____ |) | |

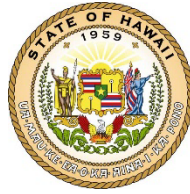
FINDINGS OF FACT.
CONCLUSIONS OF LAW, DECISION AND ORDER,
AND
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

Aug 5, 2023

BY 

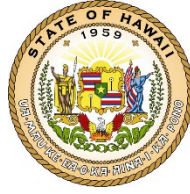
DANIEL E. ORODENKER
Executive Officer



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FINDINGS OF FACT.
CONCLUSIONS OF LAW, DECISION AND ORDER DENYING THE 2022 MOTION
FOR EXTENSION OF TIME TO APPLY FOR REDISTRICTING OF PHASE II

Successor Petitioner RCFC Kaloko Heights, LLC, a Delaware limited liability company, Kaloko Heights B1A Holdings, LLC, a Delaware limited liability company, and Kaloko Heights Investors, LLC, a Delaware limited liability company (“Petitioner”) filed a Motion for Extension of Time to Apply for Redistricting of Phase II, seeking to further amend the Decision and Order issued on January 19, 1983. The extension of time requested was for a total of ten years until January 20, 2033, thereby extending the current time for performance under the Commission's *Order Granting Petitioner's Motion, for Extension of Time to Apply for Redistricting of Phase II*, issued on December 10, 2012.

The Commission, having heard and examined the testimony, evidence, and argument of counsel for the Petitioner and other Parties presented during the hearing, along with the pleadings filed herein, and testimony received, makes the following Findings of Fact, Conclusions of Law and Decision and Order Denying the 2022 Motion for Extension of Time to Apply for Redistricting of Phase II. To the extent these Findings of Fact contain Conclusions of Law, they shall be so considered and construed.

PROCEDURAL HISTORY

1. On January 20, 1983, the Commission issued its Decision and Order to Amend lands within Phase I (approximately 213.473 acres) of the Petitioners Original Development Plan of the subject property situated in North Kona, Island of Hawai'i ("1983 D&O"). The Commission also addressed Phase II, which is comprised of approximately 195.246 acres of land in the Petitioners Original Development Plan approved for incremental districting. The Commission ordered that the classification be granted upon receipt of an application by Petitioner for redistricting of Phase II upon a prima facie showing that Petitioner has made substantial completion of the onsite and offsite improvements within Phase I and in accordance with the Petitioner's development plan as indicated above, within five years of the date of the 1983 D&O.
2. On June 30, 1990, the Commission issued the Order Approving the Motion for Modification of Condition "A" of the 1983 D&O.
3. On November 17, 1992, the Commission issued the Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending the Conditions of the Decision and Orders Dated January 20, 1983, and June 13, 1990.

4. On December 22, 1997, the Commission issued the Order Approving Motion for Third Extension of Time to Apply for Redistricting of Phase II. Petitioner was granted an extension of time to not later than January 20, 2003, to substantially complete Phase I and to apply for redistricting of Phase II.
5. On December 5, 2002, the Commission issued the Order Approving Motion for Fourth Extension of Time to Apply for Redistricting of Phase II. Petitioner was granted an extension of time for an additional ten-year period which began January 21, 2003, and lasted through January 20, 2013.
6. On November 30, 2004, the subject parcels were conveyed from Y-O Limited to Kaloko Heights Associates, LLC, a Delaware limited liability company by Limited Warranty Deed recorded in the Bureau of Conveyances.
7. On December 10, 2012, the Commission issued the Order Granting Petitioners Fifth Motion for Extension of Time to Apply for Redistricting of Phase II (“2012 D&O”). Petitioner was granted an extension of time to the current deadline of January 20, 2023.
8. On January 22, 2013, the subject parcels were conveyed from Kaloko Heights Associates, LLC, a Delaware limited liability company to RCFC Kaloko Heights, LLC, a Delaware limited liability company, by Limited Warranty Deed recorded in the Bureau of Conveyances.
9. On November 22, 2016, the Commission issued an Order Granting in Part and Denying in Part Petitioner’s Motion for an Order Regarding Satisfaction of Affordable Housing Condition.

10. On July 19, 2022, the Petitioner filed the Motion to Amend Conditions 1, 4 and 8(b) of Decision and Order Filed on February 26, 2018.
11. On November 22, 2022, the Petitioner filed the pending Motion for Extension of Time to apply for redistricting of Phase II (“2022 Motion”); memorandum in support of motion; declaration of William W. L. Yuen; Exhibits A-B; Certificate of Service.
12. On November 29, 2022, the Land Use Commission received the Office of Planning and Sustainable Developments (“OPSD”) Extension Request for providing comments on the 2022 Motion.
13. On November 29, 2022, the Land Use Commission granted the Office of Planning and Sustainable Developments Extension Request.
14. On January 4, 2023, Petitioner filed Second Supplemental Memorandum in Support of Motion for Extension of Time to Apply for Redistricting of Phase II; Declaration of William W. L. Yuen; Exhibits 33 Through 38; Certificate of Service.
15. On January 19, 2023, the Office of Planning and Sustainable Development filed a Second Extension Request.
16. On January 31, 2023, Petitioner filed Petitioner's Third Supplemental Memo in Support of Motion for Extension of Time to Apply for Redistricting, exhibits 39-1 AIS (Oct. 2005) Part 1 – 3, and Exhibits 40-43.
17. On March 13, 2023, the OPSD filed their response to the 2022 Motion.
18. On March 20th, 2023, the LUC received an email from the County stating, the County has no objection to the Petitioner’s 2022 Motion.

19. On April 3, 2023, the agenda for the April 12, 2023, meeting was distributed to the Statewide and Hawai'i island mailing and email lists.
20. On April 4, 2023, the LUC Received Petitioner's Reply Memorandum to OPSD's Response to Motion; Declaration of Mark Meyer; COS.
21. On April 5, 2023, the LUC received written public testimony from Deborah Chang. The LUC also received a letter from the County of Hawai'i stating no objection to the 2022 Motion.
22. On April 10, 2023, Petitioner filed a Fourth Supplemental; Declaration of William W. L. Yuen; Exhibit List; Exhibit 44; Certificate of Service, dated April 7, 2023.
23. On April 10, 2023, the LUC received three public testimonies from: Kaloko-Honokōhau National Historic Park; Isaac "Paka" Harp; and Tanya Souza.
24. On April 10, 2023, the signed Staff Report was made publicly available at the Land Use Commission Office and on the LUC website.
25. On April 10, 2023, Petitioner filed a Fifth Supplemental Memorandum in Support of Motion for Extension of Time to Apply for Redistricting of Phase II; Exhibit List; Exhibit 45; Certificate of Service, dated April 10, 2023.
26. On April 11, 2023, Petitioner filed the Stipulation Regarding Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II; and Certificate of Service.
27. On April 12, 2023, the Commission held an in-person hearing on the Petitioners 2022 Motion for Extension of Time. At the hearing, the Commission entered into the record

Petitioner's 45 exhibits. The County of Hawai'i and the Office of Planning and Sustainable Development had no objections and offered no exhibits.

28. On April 12, 2023, the Petitioner used a PowerPoint Presentation at the hearing to support their argument. Commissioners received copies at the hearing, and a copy was received, stamped, and posted to the LUC website.
29. During the first opportunity for public testimony two members of the public provided oral testimony. Kimberly Crawford testified to defer the matter and requested updated studies, and Ruth Aloua testified to defer the matter and requested updated studies.
30. Petitioner commenced with its case in-chief, calling three witnesses; William Moore, Keith Kato, and Mark Mayer, providing testimony in support of Petitioners Motion.
31. The County witness, Hawai'i County Planning Department Director Zendo Kern, provided testimony in support of the Petitioners Motion. OPSD witness Land Division Chief Katia Balassiano provided testimony in support of the Motion.
32. Commissioners questioned each of the Parties on their arguments. Particular areas of concern were with respect to Hawai'i Revised Statute ("HRS") Chapter 343 compliance, affordable housing, protection of traditional and customary Hawaiian rights, and compliance with Conditions set forth in previous decision and orders.
33. During the second opportunity for public testimony, three members of the public provided oral testimony. Kimberly Crawford testified to defer the matter and requested updated studies. Ruth Aloua testified to defer the matter and requested updated studies. Thomas Yeh testified in support of the motion and Project.

34. Following discussion, the parties provided closing arguments on Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II. Thereafter, a motion was made and seconded to deny the Motion for Extension of Time to Apply for Redistricting of Phase II in accordance with the Land Use Commission’s 1983 Decision and Order.

35. The Commission, in discussion on its motion to deny Petitioner’s Motion for Extension of Time, identified the following reasons for denial:

- Petitioner failed to meet its burden of proof to support the motion.
- Petitioner’s own studies contradict what was argued by Petitioner.
- Lack of HRS Chapter 343 analysis for both Phase I and Phase II.
- Lack of Ka Pa‘akai analysis and inadequate archaeological review.
- Petitioner has not made a good faith effort to work with community on the Project.

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (“OPSD”) POSITION

36. OPSD’s Response Letter to Time Extension filed on March 13, 2023, stated the OPSD supported partial approval of Petitioner’s Motion with revisions and recommendations. This included the revision of Successor Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II for a period of only three years from January 20, 2023, to January 20, 2026.

37. OPSD was party to the Stipulation Regarding Petitioners Motion, filed on April 11, 2023, which stipulated and agreed to recommend to the LUC that Petitioner have three years, until January 20, 2026, to complete offsite infrastructure for the Kaloko Heights Project and for the Hawai‘i Island Community Development Corporation to complete

construction of affordable housing units equal to at least 10% of the residential units to be developed in Phase I of the Kaloko Heights Project, and ten years until January 20, 2033, to substantially complete onsite development of Phase I of the Kaloko Heights Project and to submit an application to the Commission to reclassify Phase II to the Urban District.

COUNTY OF HAWAI‘I DEPARTMENT OF PLANNING POSITION

The following position from the County of Hawai‘i Planning Department was submitted in the Counties letter of No Objection filed on April 5, 2023, and the Stipulation Regarding Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II April 11, 2023.

38. Department of Planning reviewed the Motion and had no objections to the extension of time requested by Petitioner to apply for Redistricting of Phase II.
39. The Planning Department was party to the Stipulation Regarding Petitioners Motion, which was filed on April 11, 2023, which stipulated and agreed to recommend to the Land Use Commission that Petitioner have three years, until January 20, 2026, to complete offsite infrastructure for the Kaloko Heights Project and for the Hawai‘i Island Community Development Corporation to complete construction of affordable housing units equal to at least 10% of the residential units to be developed in Phase I of the Kaloko Heights Project, and ten years until January 20, 2033, to substantially complete onsite development of Phase I of the Kaloko Heights Project and to submit an application to the Commission to reclassify Phase II to the Urban District.

FINDINGS BY THE COMMISSION

40. Petitioner never conducted a HRS Chapter 343 analysis for the entire project contemplated by the Original Petition. Petitioner submitted a Planning Study for Phase I and Phase II, prepared in December of 1981. Petitioner submitted 45 Exhibits¹, none of which include a HRS Chapter 343 analysis for Phase I and Phase II.
41. The Petitioner completed an updated topographic survey of the Phase I Project area in 2017, which resulted in important changes, including relocation of the affordable housing site, as well as several other factors.
42. The current Phase I Project as proposed by Petitioner, includes critical changes that were not in the original plan and Planning Study represented to the Commission in 1981. One of the revisions changed the method of sewage disposal for the entire Project, from cesspools to having a sewage connection [Tr. 04/12/2023; pg. 53].
43. Petitioner for the Affordable Housing Project completed an environmental assessment for a small portion of the total Project area that was accepted by the County. The environmental assessment (“EA”) was triggered due to use of State and County funds, as well as use of State/ County lands for sewer lines to connect the entire project, including the affordable housing component to the County wastewater treatment facility. The EA only covered the 10-acre affordable housing portion of the Project, which makes up approximately 4% of the total Project area [Tr. 04/12/2023; pg. 77-78].

¹ Petitioners Exhibit list includes 45 Exhibits, submitted in Petitioner’s Fifth Supplemental Memorandum in Support of Motion for Extension of Time to Apply for Redistricting of Phase II; Exhibit List; Exhibit 45; COS

44. The Commission finds that the sewer connections for the entire Project, both Phase I and Phase II will require tunneling beneath State highways and a connection to the Kealakehe Wastewater Treatment Facility, a facility owned and operated by the County of Hawai‘i [Tr. 04/12/2023; pgs. 54, 129, 130, and 131].
45. The ‘Aimakapa and Kaloko Fishponds are less than 3 miles makai of the Project [Tr. 04/12/2023; pgs. 21-23, and public testimony received 04/10/2023 from Kaloko-Honokōhau National Historical Park]. Since the restoration of the fishponds started in 2015, the group Hui Kaloko Honokōhau has not been contacted or consulted regarding potential environmental impacts of the Project’s development on the fishponds or cultural practices in the area.
46. The Commission found during the environmental assessment and archeological inventory update for the affordable housing project, located on an eleven-acre portion of the Project, additional archeological sites were found [Tr. 04/12/2023; pg. 72,78,83]. Oral and written testimony also noted recent archaeological discoveries in areas with the Project. [Tr. 04/12/2023; pgs. 24-30].
47. The Commission finds that Petitioner is not willing to do an additional archeological study to update and amend the 2005 study [Tr. 04/12/2023; pg. 108].

RULINGS ON FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. HRS §205-1(c) authorizes the Commission to “adopt rules guiding its conduct[.]”
2. As defined in HAR §15-15-03,
“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:
 - (1) Petitions for district boundary amendment;
 - (2) Petitions for special permit;
 - (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
 - (4) Petitions for declaratory orders under section 91-8, HRS;
 - (5) An investigation or review instituted or requested to be initiated by the commission; and
 - (6) All other matters in the administration of chapter 205, HRS.
3. Pursuant to HAR §15-15-70(a), any party may make a motion before, during, or after the close of hearing.
4. Pursuant to HAR §15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission’s order, the petitioner shall file a motion in accordance with HAR §15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the

condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time the motion is filed.

5. HRS §91-10(5) provides "Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."
6. HAR §15-15-59(a), provides that "...Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion."
7. Pursuant to HAR §15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.
8. The courts have recognized that an agency, acting as factfinder, has the discretion to determine the credibility of a witness and weigh the evidence before it.²
9. HAR§11-200.1-11(d) provides "Agencies shall not, without careful examination and comparison, use past determinations and previous EIS's to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted EIS's. Further, when previous determinations and previous EIS's are considered or incorporated by reference, they shall be substantially relevant to the action being considered."

² *State v. Pioneer Mill Co., Ltd.*, 64 Haw. 168, 179, 637 P. 2d 57, 65 (1996) (citing *Territory v. Adelmeyer*, 45 Haw. 144, 163, 363 P.2d 979, 989 (1961)); *State v. Eastman*, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996); *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai'i 505, 52, 364 P.3d 213, 230 (2015); *In re Gray Line Hawaii, Ltd.*, 93 Hawai'i 45, 52-53, 995 P.2d 776, 783-784 (2000); and *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)).

10. Article XI, Section 1, of the Hawai‘i State Constitution requires the State to conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals and energy sources and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
11. Article XI, Section 1, of the Hawai‘i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. *Kaua‘i Springs, Inc. v. Planning Comm’n of Cnty. of Kaua‘i*, 133 Hawai‘i 141, 324 P.3d 951 (2014).
12. Article XI, Section 3, of the Hawai‘i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.
13. Article XI, Section 7, of the Hawai‘i State Constitution states that the State has an obligation to protect, control and regulate the use of Hawai‘i’s water resources for the benefit of its people.
14. The Hawai‘i Supreme Court has required a comprehensive Chapter 343 analysis for an entire project where there is a use of State or county lands, and where utility or infrastructure connections are made with State or county facilities. *Umberger v. Department of Land and Natural Resources*, 140 Hawai‘i 500, 403 P.3d 277 (2017)(use of State land includes permitting program for aquarium fish collection in State marine conservation district); *Sierra Club v. Office of Planning, State of Hawai‘i*, 109 Hawai‘i

411, 126 P.3d 1098 (2006)(Chapter 343 analysis for entire project required at reclassification stage and the development proposed a use of State land because it involved tunnelling under State land); *Protection of North Kohala Coastline v. County of Hawai‘i*, 91 Hawai‘i 94, 103, 979 P.2d 1120, 1129 (1999)(Chapter 343 analysis required where development involved construction of two underpasses under a State highway); *Kahana Sunset Owners Association v. County of Maui*, 86 Hawai‘i 66, 74, 947 P.2d 378, 386 (1997)(Chapter 343 analysis required for entire project where proposed drainage system would run under State land).

15. Based on the facts of this case, including the use of State funds and the use of State lands, a Chapter 343 analysis for the entire project is required by Hawai‘i law as part of the reclassification process.
16. Article XII, Section 7, of the Hawai‘i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai‘i and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. See *Pub. Access Shoreline Hawai‘i v. Hawai‘i Cnty. Planning Comm’n*, 79 Hawai‘i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995).
17. The Hawai‘i Supreme Court has recognized an affirmative duty on State agencies to preserve and protect traditional and customary native Hawaiian rights, and the State and its agencies have “the power to protect these rights and to prevent any interference with the exercise of these rights”. In addition, “state agencies such as the LUC may not act without independently considering the effect of their actions on Hawaiian traditions and practices”. *Ka Pa‘akai O Ka‘Aina v. Land Use Commission, State of Hawai‘i*, 94

Hawai‘i 31, 7 P.3d 1068 (2000)(“... state agencies such as the LUC may not act without independently considering the effect of their actions on Hawaiian traditions and practices”).

18. In order for the LUC to fulfill its constitutional duty to protect Native Hawaiian traditional and customary practices, the LUC has the duty to determine:

- a. The identity and scope of valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the Petition area;
- b. The extent to which those resources – including traditional and customary Native Hawaiian rights - will be affected or impaired by the proposed action; and
- c. The feasible action, if any, to be taken by the LUC to reasonably protect Native Hawaiian rights if they are found to exist.

Ka Pa ‘akai, 94 Hawai‘i at 47, P.3d at 1084.

19. The efforts made by the Applicant to ascertain whether traditional and customary rights are being practiced on the Property were not sufficient to allow the LUC to determine the identity and scope of valued cultural, historical, or natural resources in the Property, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area.

20. Without an identification of valued cultural, historical, or natural resources on the Property, the LUC is unable to make further determinations regarding the extent to which those resources will be affected or impaired by the proposed actions and the feasible action, if any, to be taken by the Commission to reasonably protect Native Hawaiian rights if they are found to exist.

21. The Commission finds that a Ka Pa‘akai analysis is applicable to the proposed reclassification and should be undertaken prior to the Commission taking affirmative action on Petitioner’s 2022 Motion [Tr. 04/12/2023; pg. 145]. See *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n, State of Hawai‘i*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).
22. The LUC concludes that its decision and findings to deny the motion to amend the 1983 Order is consistent with its duties arising under Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7 of the Hawai‘i State Constitution, based on the records and files in this matter and the factual findings above.
23. Based upon the record and files herein and the findings set forth above, the Commission concludes that Petitioner has failed to meet its burden and there is not a preponderance of evidence in the record and good cause to support the Motion. In particular, the lack of updated archeological studies covering Phase I and Phase II of the Project, a Ka Pa‘akai analysis, and compliance with HRS Chapter 343.

DECISION AND ORDER

The LUC, having duly considered the written and oral arguments presented by the Applicant, Hawai‘i County, the Office of Planning and Sustainable Development, and members of the public, and a motion having been made and seconded at the meeting on April 12, 2023 held at the West Hawai‘i Civic Center, Community Meeting Hale, Building G, 74-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai‘i 96740, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that Motion for Extension of Time to Apply for Redistricting of Phase II be DENIED for the following reasons:

Pursuant to HRS Chapter 205 and the Commission Rules under Hawai'i Administrative Rule ("HAR") chapter 15-15, upon consideration of the Commission decision-making criteria under HRS §205-17 and based upon the preponderance of the evidence, the Commission determined and concludes that the motion for the extension of time to apply for redistricting of Phase II being requested by the Petitioner is, unreasonable, violative of HRS §205-2 and Part III of HRS Chapter 205, and is inconsistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17 and 205A2.

Efforts made by the Applicant to ascertain whether traditional and customary rights are being practiced on the Property were not sufficient to allow the LUC to determine the identity and scope of valued cultural, historical, or natural resources in the Property, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area.

The Petitioners have not shown by a preponderance of evidence or good cause for amending the time for redistricting of Phase II lands in the Project set forth in the Commissions 1983 Decision. The Commission reaffirms that an updated archeological study covering the entire Phase I and Phase II, a Ka Pa'akai analysis, and compliance with HRS Chapter 343 is necessary and appropriate to protect and preserve public natural resources, valued cultural and historical resources.

ADOPTION OF ORDER

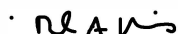
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on Aug 5, 2023. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this day of Aug 5, 2023, per motion on April 12, 2023.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



DANIEL MORRIS
Deputy Attorney General

By *Dan V. Giovanni*
DAN GIOVANNI
Chairperson and Commissioner

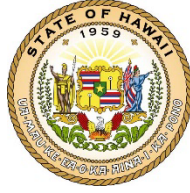
Filed and effective on:

Aug 5, 2023

Certified by:



DANIEL E. ORODENKER
Executive Officer



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Kaloko and Kohanaiki, North Kona, Hawai'i,)
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20 and 57 to 62.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ON THE 2022 MOTION FOR EXTENSION OF TIME was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

HAND Mary Alice Evans, Acting Director
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Dated Aug 5, 2023
Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Office